ORIGINAL

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FILED
2008 JUL 30 PM 2:55
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

Attorney for Defendant
UBS FINANCIAL SERVICES INC.
(improperly pled as "UBS Financial Services, Inc.")

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

GAIL STRUTHERS, an individual,

Plaintiff,

v.

UBS FINANCIAL SERVICES, INC., a corporation; and DOES 1 through 10, inclusive,

Defendants.

CASE NO. '08 CV 1381 J JMA

NOTICE OF REMOVAL OF CIVIL ACTION PURSUANT TO 28 U.S.C. § 1441
[Diversity Jurisdiction]

PLEASE TAKE NOTICE that Defendant UBS FINANCIAL SERVICES INC. (improperly pled as "UBS Financial Services, Inc.") ("Defendant"), contemporaneously with the filing of this Notice, is effecting the removal of the above-captioned action from the Superior Court of the State of California for the County of San Diego to the United States District Court for the Southern District of California.

I. PLEADINGS, PROCESS, AND ORDERS

1. On or about March 3, 2008, Plaintiff Gail Struthers ("Plaintiff") commenced the above-entitled action in the Superior Court of the State of California for the County of San Diego by filing a complaint therein entitled *Gail*

ORIGINAL

Struthers, an individual, v. UBS Financial Services, Inc., a corporation, and DOES 1 through 10, inclusive, Case No. 37-2008-00079382-CU-BT-CTL. The original complaint was never served. Thereafter, on or about June 27, 2008, Plaintiff filed a First Amended Complaint bearing the same Case Number. ("FAC"). The FAC purports to state causes of action for: (1) intentional misrepresentation; (2) negligent misrepresentation; (3) violation of Plaintiff's rights under the California Fair Employment and Housing Law; (4) invasion of privacy; (5) intentional infliction of emotional distress; (6) breach of implied covenant of good fair and fair dealing; (7) partial rescission; and (8) unlawfully preventing employment by misrepresentation. True and correct copies of the Summons, First Amended Complaint, and Civil Case Cover Sheet are attached hereto collectively as Exhibit 1.

2. On or about July 1, 2008, the Summons, Complaint, and First Amended Complaint were served on Defendant's agent for service.

3. On or about July 28, 2008, Defendant filed and served its Answer to the FAC. A true and correct copy of the Answer is attached hereto as Exhibit 2.

4. Exhibits 1 and 2 constitute all the process, pleadings and orders delivered on any party in the Superior Court action.

II. DIVERSITY JURISDICTION

5. This action is a civil action of which this Court has original diversity jurisdiction under 28 U.S.C. §1332, and is one which may be removed to the United States District Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441(b) in that it is a civil action in which the matter in controversy exceeds the sum of $75,000.00, exclusive of interest and costs, and is between citizens of different states.

A. Citizenship

6. Defendant is informed and believes that Plaintiff was at the time of the filing of this action and at the time of removal, and still is, and at all relevant

times has been a citizen of the State of California. Exhibit 1, FAC ¶ 1.

7. Defendant was, at the time of the filing of this action and at the time of removal, and still is, and at all relevant times has been a corporation formed under the laws of the state of Delaware, and has its principal place of business in New Jersey. Defendant, therefore, is a citizen of New Jersey. FAC ¶ 2.

B. Fictitious Does

8. Defendants Does 1 through 10 are wholly fictitious. The Complaint does not set forth the identity or the status of any said fictitious defendants, nor does it set forth any charging allegation against any fictitious defendants. The naming of the fictitious defendants does not destroy the diversity of citizenship between the parties in this action. 28 U.S.C. section 1441(a).

C. Amount in Controversy

9. The amount in controversy in this matter exceeds the sum or value of $75,000.00, exclusive of interest and costs. It is well settled that, in determining whether a Complaint meets the $75,000.00 threshold amount in controversy set forth in 28 U.S.C. § 1332(a), a court should consider the aggregate amount of the claims and value of the claims. *Wolde-Meskel v. Vocational Instruction Project*, 166 F.3d 59, 62 (2nd Cir. 1999) (diversity statute confers jurisdiction over entire action, not just specific claims alleged in complaint, and, therefore, claims of single plaintiff are aggregated in order to satisfy amount in controversy). The fact that a Complaint fails to specify the amount of damages in a dollar amount does not deprive this Court of jurisdiction. *See White v. J.C. Penney Life Ins. Co.*, 861 F. Supp. 25, 26 (S.D. W.Va. 1994) (defendant may remove suit to federal court notwithstanding the failure of Plaintiff to plead a specific dollar amount in controversy; if the rules were otherwise, "any plaintiff could avoid removal simply by declining to place a specific dollar claim upon its claim.") Defendant need only establish by a preponderance of the evidence that Plaintiff's claim is likely to exceed the jurisdictional minimum. *Sanchez v. Monumental Life Ins. Co.*, 102

F.3d 398, 404 (9th Cir. 1996); *Singer v. State Farm Mutual Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997).

10. Here, Plaintiff seeks recovery on several fronts, including compensatory damages for alleged lost past and future wages which she claims is approximately $300,000 annually, $132,239 in forfeited stock, and for emotional distress. FAC ¶¶ 7, 19, 39, 42, 72, 35 (sic), 36 (sic), 76. Plaintiff does not limit the amount of damages she is seeking.

11. In her FAC, Plaintiff alleges that she was earning more than $300,000 with her prior employer, that she was induced to leave her prior employer based on Defendant's alleged fraud and negligent misrepresentations, that Defendant terminated her employment in May, 2007 and that Defendant's conduct has prevented her from ever obtaining employment in the securities industry. FAC ¶ 42.

12. Plaintiff also specifically alleges that due to the discharge or her employment by Defendant, she forfeited $132, 239 in stock. FAC ¶ 39.

13. In determining the amount in controversy for diversity and removal jurisdiction, great weight is given to a plaintiff's assessment of the value of his or her case. *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1094 (11th Cir. 1994); *Albright v. R. J. Reynolds Tobacco Co.*, 531 F.2d 132, 135 (3rd Cir. 1976). A court considering the issue of removal will assume that the plaintiff's counsel best knows the value of his or her client's case and is not engaging in deception in representing the plaintiff's damages. *Burns v. Windsor Ins. Co.*, *supra*, 31 F.3d at 1095. "There is a strong presumption that the plaintiff has not claimed a large amount in order to confer jurisdiction on a federal court or that the parties have colluded to that end." *Albright v. R. J. Reynolds Tobacco Co.*, *supra*, 531 F.2d at 135.

14. Plaintiffs alleging emotional distress as a result of wrongful termination regularly seek in excess of $75,000.00 in such damages.

15. Plaintiff's request for attorneys' fees may also be taken into account to determine jurisdictional amounts. *Goldberg v. C.P.C. International, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982). Plaintiff seeks an unspecified amount of attorneys' fees. (Exhibit 1, Plaintiff's Prayer for Relief in FAC).

16. Considering the aggregate value of Plaintiff's claims, the amount in controversy is in excess of $75,000.00. Therefore, the amount in controversy requirement of 28 U.S.C. § 1332 has been met, and this action is removable to this Court pursuant to 28 U.S.C. § 1441.

17. Accordingly, this Court has original "diversity" jurisdiction over this action pursuant to 28 U.S.C. §1332 because complete diversity of citizenship exists between Plaintiff and Defendant, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

III. VENUE

18. Venue is proper in this district under U.S.C. §1441(a) because the state court where the action is pending is located in this district.

IV. TIMELINESS OF REMOVAL

19. This Notice of Removal is timely filed in that this Notice has been filed within thirty (30) days of service of the Summons and First Amended Complaint on Defendant and within one year of the filing of the First Amended Complaint. 28 U.S.C. § 1446. The First Amended Complaint was served on Defendant on July 1, 2008. Thirty days from that is July 31, 2008.

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20. For all the foregoing reasons, this Court has original jurisdiction under 28 U.S.C. §§ 1332 and 1441(b).

DATED: July 29, 2008

EPSTEIN BECKER & GREEN, P.C.

By: ______________________
James A. Goodman
Kathryn T. McGuigan

Attorneys for Defendant
UBS FINANCIAL SERVICES INC.
(improperly pled as "UBS Financial Services, Inc.")

BLUEBIRDonline.com (888) 477-0720

EXHIBIT "1"

CSC.

CORPORATION SERVICE COMPANY®

LDD / ALL
Transmittal Number: 5877778
Date Processed: 07/01/2008

Notice of Service of Process

Primary Contact:	Mercinth Pearce UBS Financial Services Inc. 1200 Harbor Boulevard Floor 10TH Weehawken, NJ 07086

Entity:	UBS Financial Services Inc. Entity ID Number 1707190
Entity Served:	UBS Financial Services, Inc.
Title of Action:	Gail Struthers vs. USB Financial Services, Inc.
Document(s) Type:	Summons and Amended Complaint
Nature of Action:	Other
Court:	San Diego Superior Court, California
Case Number:	37-2008-00079382-CU-BT-CTL
Jurisdiction Served:	California
Date Served on CSC:	07/01/2008
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	David E. Rosenbaum 626-432-7422

Notes: Some pages of original document are smudged and blurry.

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

CSC is SAS70 Type II certified for its Litigation Management System.

2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

06/28/2008 17 07 FAX 6267925433

COPY

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
CIVIL BUSINESS OFFICE 5
2008 JUN 30 P 3: 57
CLERK-SUPERIOR COURT

SUMMONS ON AMENDED COMPLAINT
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

UBS FINANCIAL SERVICES, INC., a corporation; and DOES 1 through 10, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

GAIL STRUTHERS

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER: *(Número del Caso):* 37-2008-00079382-CU-BT-CTL

220 West Broadway, San Diego, California 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

David E. Rosenbaum Bar #49736
484 So. Euclid Ave #105 (626)-432-7422
Pasadena, CA 91101

DATE: JUNE 30, 2008 *(Fecha)* JUN 3 0 2008 Clerk, by *(Secretario)* R. Vela, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. [ ] as an individual defendant.
2. [ ] as the person sued under the fictitious name of *(specify)*:
3. [X] on behalf of *(specify)*: USB FINANCIAL SERVICES, INC. A CALIFORNIA CORPORATION
   under: [X] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
   [ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
   [ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (authorized person)
   [ ] other *(specify)*:
4. [X] by personal delivery on *(date)*: 1 JULY 08

Page 1 of 1

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

Code of Civil Procedure §§ 412.20, 465

12011185 IF - 6/28/2008 5:08:20 PM

03/06/2008 15:34 FAX 6267925433 002/002

COPY

CIVIL BUSINESS OFFICE CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
David E. Rosenbaum, Esq. S.B. 49735
484 So. Euclid Avenue, Suite 105
Pasadena, CA 91101
TELEPHONE NO.: 626-432-7422 FAX NO.: 626-792-5433
ATTORNEY FOR (Name):

FOR COURT USE ONLY

08 MAR -6 PM 4:06

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS:
CITY AND ZIP CODE: San Diego, California 92101
BRANCH NAME: Central [Hall of Justice]

CASE NAME: GAIL STRUTHERS vs. UBS FINANCIAL SERVICES, INC.

CIVIL CASE COVER SHEET

[✓] Unlimited (Amount demanded exceeds $25,000) [ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 37-2008-00079382-CU-BT-CTL
JUDGE:
DEPT:

BY FAX

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [✓] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint (not specified above) (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition (not specified above) (43)

2. This case [ ] is [✓] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought (*check all that apply*): a. [✓] monetary b. [ ] nonmonetary; declaratory or injunctive relief c. [✓] punitive
4. Number of causes of action (*specify*): SIX
5. This case [ ] is [✓] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)

Date: March 6, 2008
DAVID E. ROSENBAUM
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central TELEPHONE NUMBER: (619) 685-6148	
PLAINTIFF(S) / PETITIONER(S): Gail Struthers	
DEFENDANT(S) / RESPONDENT(S): UBS Financial Services Inc	
STRUTHERS VS. UBS FINANCIAL SERVICES INC	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2008-00079382-CU-BT-CTL

Judge: Jeffrey B. Barton

Department: C-69

COMPLAINT/PETITION FILED: 03/06/2008

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2008-00079382-CU-BT-CTL CASE TITLE: Struthers vs. UBS Financial Services Inc

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participant in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non- binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: $150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under $50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	FOR COURT USE ONLY
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
PLAINTIFF(S): Gail Struthers	
DEFENDANT(S): UBS Financial Services Inc	
SHORT TITLE: STRUTHERS VS. UBS FINANCIAL SERVICES INC	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)	CASE NUMBER: 37-2008-00079382-CU-BT-CTL

Judge: Jeffrey B. Barton

Department: C-69

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- ☐ Court-Referred Mediation Program
- ☐ Private Neutral Evaluation
- ☐ Private Mini-Trial
- ☐ Private Summary Jury Trial
- ☐ Private Settlement Conference with Private Neutral
- ☐ Court-Ordered Nonbinding Arbitration
- ☐ Court-Ordered Binding Arbitration (Stipulated)
- ☐ Private Reference to General Referee
- ☐ Private Reference to Judge
- ☐ Private Binding Arbitration
- ☐ Other (specify): ______

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) ______

Alternate: (mediation & arbitration only) ______

Date: ______

Date: ______

______
Name of Plaintiff

______
Name of Defendant

______
Signature

______
Signature

______
Name of Plaintiff's Attorney

______
Name of Defendant's Attorney

______
Signature

______
Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 03/06/2008

______
JUDGE OF THE SUPERIOR COURT

STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION

03/06/2008 15:13 FAX 6267925433

COPY

FILED
CIVIL BUSINESS OFFICE
CENTRAL DIVISION

08 MAR -6 PM 4:06

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

David E. Rosenbaum STATE BAR NO. 49735
484 So. Euclid Avenue, Suite 105
Pasadena, California 91101
Telephone: (626) 432-7422
FAX: (626) 792-5433

Attorney for Plaintiff
GAIL STRUTHERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL [HALL OF JUSTICE] DIVISION

GAIL STRUTHERS, an individual, Plaintiff, vs. UBS FINANCIAL SERVICES, INC., a corporation; and DOES 1 through 10, inclusive, Defendants.	Case No. 37-2008-00079382-CU-BT-CTL COMPLAINT FOR: (1) INTENTIONAL MISREPRESENTATION (2) NEGLIGENT MISREPRESENTATION (2) VIOLATION OF PLAINTIFF'S RIGHTS UNDER THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING LAW (3) INVASION OF PRIVACY (2) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (5) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

BY FAX

Plaintiff, for her Complaint alleges:

GENERAL ALLEGATIONS

1. Plaintiff, GAIL STRUTHERS, is an individual who resides and has at certain times relevant hereto resided in the State of California, County of San Diego, and City of San Diego.

2. Defendant, UBS FINANCIAL SERVICES, INC. ("UBS," not in italics), is and at all times relevant herein was, a corporation organized under the laws of the State of Delaware, which does business in the State of California and has a principal place of

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GAIL STRUTHERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL [HALL OF JUSTICE] DIVISION

GAIL STRUTHERS, an individual, Plaintiff, vs. UBS FINANCIAL SERVICES, INC., a corporation; and DOES 1 through 10, inclusive, Defendants.	Case No. **COMPLAINT FOR:** **(1) INTENTIONAL MISREPRESENTATION** **(2) NEGLIGENT MISREPRESENTATION** **(2) VIOLATION OF PLAINTIFF'S RIGHTS UNDER THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING LAW** **(3) INVASION OF PRIVACY** **(2) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS** **(5) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

Plaintiff, for her Complaint alleges:

GENERAL ALLEGATIONS

1. Plaintiff, GAIL STRUTHERS, is an individual who resides and has at certain times relevant hereto resided in the State of California, County of San Diego, and City of San Diego.

2. Defendant, UBS FINANCIAL SERVICES, INC. ("UBS," not in italics), is and at all times relevant herein was, a corporation organized under the laws of the State of Delaware, which does business in the State of California and has a principal place of

business in the County of San Diego.

3. Plaintiff does not know the true names and capacities, whether individual, corporate, partnership or otherwise, of each of the Defendants designated herein as DOES 1 through 10 at this time and sue said defendants herein under fictitious names. Each of them is a resident of and/or transacts business in the State of California. Plaintiff will ask leave of court for permission to amend this complaint to show the true names and capacities of said DOES when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is indebted to Plaintiff as hereinafter alleged, and that Plaintiff's rights against such fictitiously named DOE Defendants arise from such indebtedness. Whenever reference is made herein to named Defendant UBS, said reference shall include these fictitiously named Doe Defendants.

4. With respect to each allegation contained herein that is alleged on plaintiff's information and belief, said allegations are likely to have evidentiary support after Plaintiff is given a reasonable opportunity for further investigation and discovery.

5. Plaintiff is informed and believes and on that basis alleges that each of Defendants DOES 1 through 10 was the agent, partner, servant and/or employee of each of the other Defendants, and acted or failed to act as herein alleged in the course and scope of said agency, authority, partnership, and/or employment.

FIRST CAUSE OF ACTION

(Intentional Misrepresentation)

(As Against All Defendants)

6. Plaintiff incorporates herein by this reference paragraphs 1 through 5, above, and re-alleges them as if fully set forth herein.

7. Before March 7, 2006, plaintiff was a securities broker employed at Morgan Stanley, with $55 million in assets under management. Plaintiff was generating approximately $500,000 per year in revenue, from which her take-home compensation was over $300,000 per year, plus benefits and pension & 401-K contributions. She was

the No. 1 revenue-producing broker for her years of experience in Morgan Stanley, and, in that capacity, spoke at Morgan Stanley's annual national conference in 2005.

8. To induce plaintiff to resign from Morgan Stanley and become employed by UBS, Defendant UBS made numerous material representations. UBS intended that plaintiff would rely on said representations and would resign from her employment with Morgan Stanley and become employed by UBS.

9. Plaintiff justifiably relied on UBS's said material representations and, as a result, resigned from her employment with Morgan Stanley and became employed by UBS.

10. Unknown to plaintiff, said representations were false and UBS knew them to be false when the representations were made.

11. In the alternative, said representations were false and UBS knew or by the exercise of reasonable care should have known that it did not know whether said representations were true or false.

12. When UBS made certain of said representations to plaintiff, UBS was duty bound to speak the whole truth known to it concerning such matters, for where one speaks as to a specific subject, he must speak the whole truth in making such representation to the end that he does not conceal any facts which materially qualify those stated, for one who is asked for information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

13. In the alternative, when UBS made such representations to plaintiff, UBS was duty bound to speak the whole truth known to it concerning such matters in that UBS had exclusive knowledge of material facts not known to plaintiff and UBS knew that these material facts were unknown to, or were beyond the reach of, plaintiff.

14. In the alternative, when Defendants made such representations to plaintiff, UBS was duty bound to speak the whole truth known to it concerning such matters in that UBS as prospective employer had a fiduciary or quasi-fiduciary duty of disclosure to a prospective employee under the circumstances alleged herein.

15. Had plaintiff known that said representations were false, she would not have resigned from her employment with Morgan Stanley and would not have agreed to be employed by UBS.

16. As a proximate result of the foregoing, plaintiff has suffered damages in an amount to be proven at trial.

17. Based on the foregoing, UBS's aforementioned conduct constituted willful and intentional misrepresentations, deceit, or concealment of material facts known to Defendants within the meaning of Civil Code § 1572. UBS engaged in said conduct in conscious disregard of plaintiff's rights, and in violation of Civil Code §§1709 and 3343. Accordingly, Defendant's conduct justifies an award of exemplary and punitive damages.

SECOND CAUSE OF ACTION

(Negligent Misrepresentation)

(As Against All Defendants)

18. Plaintiff incorporates herein by this reference paragraphs 1 through 5 and 7 through 16 above, and re-alleges them as if fully set forth herein.

19. When UBS made the said representations, it had no reasonable grounds for believing them to be true.

THIRD CAUSE OF ACTION

(For Violation of Plaintiff's Rights Under the California Fair Employment and Housing Law)

(As Against All Defendants)

20. Plaintiff incorporates herein by this reference paragraphs 1 through 5 and 7 above, and re-alleges them as if fully set forth herein.

21. During plaintiff's employment at Morgan Stanley, she became acquainted with Mr. Toby Ferner (herein, "Ferner"), another broker employed by Morgan Stanley.

22. Ferner left the employment of Morgan Stanley to become the manager of UBS's Carlsbad, California office. At all times mentioned herein, Ferner was Vice

President and Branch Manager of UBS's Carlsbad, California office.

23. In 2006, Ferner approached plaintiff with a proposal that she move from Morgan Stanley to UBS.

24. At all times during her career with Morgan Stanley, plaintiff had and still has a mental disability, commonly known as 'bi-polar disorder.' That disability is controllable with medication that plaintiff takes and posed no difficulty at Morgan Stanley, where plaintiff was permitted to work from her home when necessary either because of the bi-polar disorder or because plaintiff has children that she must care for.

25. Before becoming employed by UBS, plaintiff informed Ferner of the bi-polar disorder and of her occasional need to work from home due to it and due to her children. Plaintiff further informed Ferner that, for these reasons, plaintiff would occasionally need to work and place customers' orders from her home. In the course of dealings that led to her employment with UBS, Ferner represented that UBS would accommodate plaintiff's said need to work and place customers' orders from her home.

26. On or about March 7, 2006, the plaintiff commenced employment with UBS as a financial advisor in its Carlsbad, California office.

27. Approximately simultaneous with plaintiff's commencement of employment, UBS also hired a financial advisor whose first name is Mike, but whose full name and location are currently unknown to plaintiff.

28. In or about the spring and early summer of 2006, Mike engaged a course of sexual harassment of plaintiff and other female employees in UBS's Carlsbad, California office. Mike engaged in said harassment with the actual and constructive knowledge and consent of Defendant UBS.

29. Mike's sexual harassment of the plaintiff consisted of sexual advances and demands, sexual assault, and sexually degrading remarks to plaintiff. Mike engaged in similar conduct with respect to other women in UBS's Carlsbad, California office.

30. Within approximately one month after being hired, plaintiff began complaining to Ferner about the above sexual harassment of plaintiff and other female employees in

UBS's Carlsbad, California office. Ferner took no action with respect to Mike's sexual harassment and, when plaintiff complained that Mike sexually assaulted her, Ferber stated that plaintiff could "take it" or could "take care of [herself]" or words to that effect.

31. In retaliation for plaintiff's complaints about Mike's sexual harassment, Ferner on behalf of UBS took numerous actions against plaintiff which eventually resulted in an environment in the Carlsbad office that was so hostile to plaintiff that plaintiff was unable to continue working in that office. These included, but are not limited to the following: Ferner violated plaintiff's medical privacy, both within the office and outside. Disclosures concerning plaintiff's medical condition were made to plaintiff's Sales Assistant. In addition, UBS disclosed a series of adverse communications about plaintiff's personnel status to her Sales Assistant who then sent them to plaintiff. The said violations of privacy as to plaintiff's Sales Assistant not only made it impossible for plaintiff to work with the Sales Assistant, but also subjected plaintiff to humiliation and ridicule, and caused plaintiff to become a virtual pariah among the staff that plaintiff depended on. In addition, Ferner made defamatory statements about plaintiff to people in other securities firms, and to at least one of plaintiff's customers. On information and belief, plaintiff further alleges that Ferner made defamatory innuendos about her to others. When plaintiff asked that Ferner honor the agreement that UBS would accommodate her need to work and place orders from her home Ferner refused. This refusal continued even after plaintiff's doctor sent UBS a letter in September 2006 stating that due to plaintiff's medical disability and the environment in the Carlsbad office, she needed to work from home. Another example of the retaliation was that Ferner began dealing directly with plaintiff's customers and attempted to persuade them to switch their accounts to Ferner or to other brokers in the office.

32. As a result of the foregoing and other wrongful conduct by Ferner and UBS, plaintiff entered treatment and continues to be treated for mental disability due to the foregoing events. On or about October 31, 2006, plaintiff wrote to Ferner (i) describing the foregoing and other intolerable working conditions and UBS's numerous breaches

of agreements, (ii) informing him that these matters had caused plaintiff to suffer mental disability and (iii) that plaintiff's physician had advised that she was not to return to work under the existing working conditions. Despite the October 31, 2006 letter and Ferner's knowledge that the medical disability prevented plaintiff from reporting for work in his office, Ferner continued to retaliate against plaintiff by repeatedly insisting that she report to work by certain specific dates. This continued even after plaintiff's physician submitted a letter from my doctor advising that plaintiff was disabled and unable to report for work.

33. Ultimately, plaintiff was placed on leave status and continued in that status from January 2007 through mid-May 2007. UBS provided plaintiff no documentation as to the leave status or its length or expiration date. There was no communication between plaintiff and UBS during the period of January 2007 through mid-May 2007.

34. From January 2007 through May 2007 and thereafter continuing to this date, plaintiff has been under treatment for mental disability by her physician and mental health professionals, including psychiatrists. Plaintiff's mental disability increased in severity to the point that she was hospitalized from May 11 through May 17, 2007.

35. During that hospitalization, UBS on May 14, 2007, wrote to plaintiff stating that her medical leave had expired on May 1, 2007, that she was required to report for work in Ferner's office on that date, that she failed to report, and that, as a result, she was being discharged from UBS's employment, effective May 15, 2007.

36. On May 25, 2007, UBS made written demand that plaintiff repay a promissory note that was supposed to be forgiven if UBS discharged plaintiff due to disability.

37. UBS, by its aforesaid conduct, has violated plaintiff's rights under the California Fair Employment and Housing Act.

38. As a direct and proximate result of UBS's conduct, plaintiff has suffered damage in an amount to be proved at trial.

39. Plaintiff has filed charges of discrimination with the California Department of Fair Employment and Housing and has received a right to sue letter, a copy of which is

attached hereto as Exhibit 1.

FOURTH CAUSE OF ACTION

(Invasion of Privacy)

(As Against All Defendants)

40. Plaintiff incorporates herein by this reference paragraphs 1 through 5, 7 and 21 through 36 above, and re-alleges them as if fully set forth herein.

41. UBS's disclosures of private information concerning plaintiff's medical disability and personnel matters violated plaintiff's privacy.

42. The disclosure by defendant was a public disclosure.

43. The facts disclosed about plaintiff were private facts that plaintiff desired to keep private.

44. The disclosure by defendant of the above facts was offensive and objectionable to plaintiff and to a reasonable person of ordinary sensibilities.

45. The private facts disclosed by defendant were not of legitimate public concern, or newsworthy.

46. As a proximate result of the above disclosure, plaintiff was scorned and abandoned by her business associates, exposed to contempt and ridicule, and suffered loss of reputation and standing in the community, all of which caused her general damage in an amount according to proof.

47. As a further proximate result of the above-mentioned disclosure, plaintiff has suffered injury to her business and employment in an amount according to proof.

48. In making said disclosures, UBS was guilty of oppression and malice. UBS engaged in said conduct in conscious disregard of plaintiff's rights, and in violation of Civil Code §§1709 and 3343. Plaintiff therefore seeks an award of exemplary damages.

FIFTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

(As Against All Defendants)

49. Plaintiff incorporates herein by this reference paragraphs 1 through 5, 7, 21 through 36, and 41 through 47 above, and re-alleges them as if fully set forth herein.

50. The actions of UBS were outrageous and intentional and done with malice and reckless disregard of the likelihood of causing the plaintiff to suffer severe emotional distress.

51. As a proximate result of the aforementioned outrageous acts of UBS, plaintiff has suffered emotional damage. Additionally, as a proximate result of UBS's aforementioned outrageous acts, plaintiff has been unable to work and will be unable to work in her profession and occupation.

52. As a proximate result of the aforementioned outrageous acts of the defendant(s), plaintiff has suffered general and special damages in the sums to be proved at trial.

53. In doing the acts herein alleged, UBS acted knowingly, intentionally, and maliciously. UBS engaged in said conduct in conscious disregard of plaintiff's rights, and in violation of Civil Code §§1709 and 3343. Plaintiff therefore seeks an award of exemplary damages.

SIXTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

(As Against All Defendants)

54. Plaintiff incorporates herein by this reference paragraphs 1 through 5, 7, 21 through 36, and 41 through 47 above, and re-alleges them as if fully set forth herein.

55. By its aforesaid conduct, UBS breached the implied covenant of good faith and fair dealing of its contract with plaintiff.

56. As a proximate result of the aforementioned conduct, plaintiff has suffered damages in an amount be proved at trial.

WHEREFORE, Plaintiff for judgment as follows:

1. For compensatory damages in an amount to be proven at trial;
2. With respect to the First, Third, Fourth and Fifth Causes of Action, for

punitive and exemplary damages according to proof;

3. With respect to all causes of action:

a. For pre-judgment interest as allowed by law;

b. For attorney fees and costs as authorized by law;

c. For costs of suit herein incurred; and

d. For such other and further relief as the court deems proper.

DATED: March 6, 2008

David E. Rosenbaum

DAVID E. ROSENBAUM
Attorney for Plaintiff GAIL STRUTHERS

EXHIBIT 1

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
1350 FRONT STREET, SUITE 3005, SAN DIEGO, CA. 92101
(619) 645-2681
www.dfeh.ca.gov

March 05, 2008

STRUTHERS, GAIL
3546 MT. EVEREST BLVD.
SAN DIEGO, CA 92111

RE: E200708D5077-00
STRUTHERS/UBS FINANCIAL SERVICES, INC.

Dear STRUTHERS, GAIL:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective March 05, 2008 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

Belinda LeDoux
District Administrator

cc: Case File

JENNIFER NIES
ASSOCIATE DIRECTOR, CLIENT RELATIONSHIP MANAGER
UBS FINANCIAL SERVICES INC.
1000 HARBOR BLVD., 10TH FLOOR
WEEHAWKEN NJ 07086

DFEH-200-43 (06/06)

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484 So. Euclid Avenue, Suite 105
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Telephone: (626) 432-7422
FAX: (626) 792-5433

Attorney for Plaintiff
GAIL STRUTHERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL [HALL OF JUSTICE] DIVISION

GAIL STRUTHERS, an individual, Plaintiff, vs. UBS FINANCIAL SERVICES, INC., a corporation; and DOES 1 through 10, inclusive, Defendants.	Case No. 37-2008-00079382-CU-BT-CTL [Assigned to The Hon. Jeffrey B. Barton, Dept. C-69] **FIRST AMENDED COMPLAINT FOR:** **(1) INTENTIONAL MISREPRESENTATION** **(2) NEGLIGENT MISREPRESENTATION** **(3) VIOLATION OF PLAINTIFF'S RIGHTS UNDER THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING LAW** **(4) INVASION OF PRIVACY** **(5) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS** **(6) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING** **(7) PARTIAL RESCISSION** **(8) UNLAWFULLY PREVENTING EMPLOYMENT BY MISREPRESENTATION** [*Civil Code* §§ 1572, 1709, 1710, 1689, 3294, & 3343; *Code of Civil Procedure* §1281.2; *Government Code* §§ 12900 et seq.; *Labor Code* §§ 1050, 1053, 1054]

Plaintiff, for her First Amended Complaint, alleges:

GENERAL ALLEGATIONS

1. Plaintiff, GAIL STRUTHERS, is an individual who resides and at times relevant hereto resided in the State of California, County of San Diego, and City of San Diego.

2. Defendant, UBS FINANCIAL SERVICES, INC. ("UBS," not in italics), is and at all times relevant herein was, a corporation organized under the laws of the State of Delaware, which does business in the State of California and has a principal place of business in the County of San Diego.

3. Plaintiff does not know the true names and capacities, whether individual, corporate, or otherwise, of the Defendants designated herein as DOES 1 through 10 at this time and sues said defendants herein under fictitious names. Each of them is a resident of and/or transacts business in California. Plaintiff will amend this complaint to show the true names and capacities of said DOES when ascertained. Plaintiff is informed and believes and based thereon alleges that each of the DOES is indebted to plaintiff as hereinafter alleged, and that plaintiff's rights against such fictitiously named Defendants arise from such indebtedness. All references in this pleading to UBS shall include these fictitiously named Doe Defendants.

4. With respect to each allegation contained herein that plaintiff alleges on information and belief, said allegation is likely to have evidentiary support after Plaintiff is given a reasonable opportunity for further investigation and discovery.

5. Plaintiff is informed and believes and on that basis alleges that each of Defendants DOES 1 through 10 was the agent, partner, servant and/or employee of each of the other Defendants, and acted or failed to act as herein alleged in the course and scope of said agency, authority, partnership, and/or employment.

FIRST CAUSE OF ACTION

(Intentional Misrepresentation)

(As Against All Defendants)

6. Plaintiff incorporates herein by this reference paragraphs 1 through 5, above,

and re-alleges them as if fully set forth herein.

7. Before March 7, 2006, plaintiff was a securities broker employed at Morgan Stanley, with $55 million in assets under management. Plaintiff was generating approximately $529,000 per year in revenue, from which her take-home compensation was over $300,000 per year, plus benefits and pension & 401-K contributions. She was the No. 1 revenue-producing broker for her years of experience in Morgan Stanley, and, in that capacity, spoke at Morgan Stanley's annual national conference in 2005.

8. To induce plaintiff to resign from Morgan Stanley and become employed by UBS, Toby Ferner ("Ferner"), an agent of UBS, made material representations to her. These representations included, but were not limited to, the following:

a. That UBS would accommodate plaintiff's occasional extended need to work and place customers' orders by computer from her home; and

b. That UBS would pay plaintiff the equivalent of her then-gross commissions (approximately $529,000) – $396,717.00 in cash and $132,239 in stock – in exchange for her agreement to a promissory note ("Note") as to the $396,717.00 in cash, which Note would be forgiven in annual installments over a six-year period of employment. As a matter of English usage, the representation that plaintiff would have to sign such Note did not connote, mean or otherwise indicate that said Note would contain provisions (i) that plaintiff had to submit all employment disputes to binding arbitration and (ii) that UBS could terminate her employment at any time with or without cause.

9. Plaintiff is informed and believes and based thereon alleges as follows: At the time of said representations UBS knew that the said Note would contain provisions (i) requiring that plaintiff submit all employment disputes to compulsory and binding arbitration, thereby waiving her right to a jury trial under the California Constitution, (ii) that plaintiff was on 'at will' employee subject to discharge at UBS's will, and (iii) other terms and conditions that did not relate to the Note or the repayment of said Note. Before and during the events in question herein, UBS customarily used one or more

boilerplate promissory note forms that contained such arbitration and "at will" provisions in connection with the hiring of other individuals.

10. UBS failed to reveal and suppressed the information described in ¶ 9, above. The suppression of this information was likely to and did mislead plaintiff in resigning from her employment with Moran Stanley and accepting employment with UBS.

11. In the alternative, UBS made the representations referred to in ¶ 8 in absolute and unqualified terms, thereby communicating to plaintiff that UBS knew such representations to be true, when in fact UBS did not know whether such representations were true or false.

12. In the alternative, when UBS made such representations to plaintiff, UBS was duty bound to speak the whole truth known to it concerning such matters in that:

a. UBS had exclusive knowledge of material facts not known to plaintiff and knew that such facts were unknown to plaintiff or were beyond her reach;

b. UBS as the prospective employer had a fiduciary or quasi-fiduciary duty of disclosure to a prospective employee under the circumstances; and/or

c. UBS had the duty to be truthful and the failure to disclose facts which materially qualify those stated is the telling of a half-truth.

13. The aforesaid representations were material in that each and all of them were matters that would influence a reasonable person's decision to resign from employment and accept employment with a new employer in the circumstances. In the alternative, they were matters that plaintiff was likely to regard as important in making such decisions. Had plaintiff known the true facts, she would not have resigned from her employment at Morgan Stanley, would not have accepted employment with UBS, and would not have signed the Note containing the arbitration agreement.

14. UBS knew that the above representations, including but not limited to those alleged in subparagraphs 8a and 8b, were false. As to the representations referred to in subparagraph 8a, Mr. Ferner at the time of his representation had no intention to permit plaintiff to place customer orders from her home computer. As to the

representations referred to in subparagraph 8b, UBS knew these were false for the reasons stated in ¶¶ 9 and 10 and, alternatively, in ¶¶ 11-13.

15. UBS intended that plaintiff would rely on said representations and would resign from her employment with Morgan Stanley and become employed by UBS.

16. Plaintiff justifiably relied on said representations and the absence of the above described omitted information in resigning from her employment with Moran Stanley and accepting employment with UBS.

17. Unknown to plaintiff at the time, said representations were false. Had she known the true facts, she would not have resigned from her employment with Morgan Stanley, would not have accepted employment with UBS, and would not have signed the Note containing the arbitration agreement.

18. Upon plaintiff's employment with UBS, she was required to sign a Note that contained the unrelated provisions described in ¶ 9 above. UBS refused to accommodate her occasional extended need to work and place customers' orders by computer from her home. UBS failed to comply with numerous other working conditions that it had represented would apply to plaintiff.

19. As a proximate result of the foregoing, plaintiff has suffered damages in a monetary amount to be proven at trial.

20. Based on the foregoing, UBS's aforementioned conduct constituted willful and intentional misrepresentations, deceit, or concealment of material facts known to Defendants within the meaning of *Civil Code* §1572. In addition, UBS engaged in said conduct maliciously in that it did so in conscious disregard of plaintiff's rights. Accordingly, Defendant's conduct justifies an award of exemplary and punitive damages under *Civil Code* §3294.

SECOND CAUSE OF ACTION

(Negligent Misrepresentation)

(As Against All Defendants)

21. Plaintiff incorporates herein by this reference paragraphs 1 through 5, 7

through 13, and 15 through 19 above, and re-alleges them as if fully set forth herein.

22. When UBS made the said representations, it had no reasonable grounds for believing them to be true.

THIRD CAUSE OF ACTION

(For Violation of Plaintiff's Rights Under the Fair Employment and Housing Law)

(As Against All Defendants)

23. Plaintiff incorporates herein by this reference paragraphs 1 through 5, and 7 through 9 above, and re-alleges them as if fully set forth herein.

24. During plaintiff's employment at Morgan Stanley, she became acquainted with Mr. Toby Ferner (herein, "Ferner"), another broker employed by Morgan Stanley.

25. Ferner left the employment of Morgan Stanley to become the manager of UBS's Carlsbad, California office. At all times mentioned herein, Ferner was Vice President and Branch Manager of UBS's Carlsbad, California office.

26. In 2006, Ferner approached plaintiff with a proposal that she move from Morgan Stanley to UBS.

27. At all times during her career with Morgan Stanley, plaintiff had and still has a mental disability, commonly known as 'bi-polar disorder.' That disability is controllable with medication that plaintiff takes and posed no difficulty at Morgan Stanley, where plaintiff was permitted to work from her home when necessary either because of the bi-polar disorder or because plaintiff has children that she must care for.

28. Before becoming employed by UBS, plaintiff informed Ferner of the bi-polar disorder and of her occasional need to work from home due to it and due to her children. Plaintiff further informed Ferner that, for these reasons, plaintiff would occasionally need to work and place customers' orders from her home. In the course of dealings that led to her employment with UBS, Ferner represented that UBS would accommodate plaintiff's said need to work and place customers' orders from her home.

29. On or about March 7, 2006, the plaintiff commenced employment with UBS as a financial advisor in its Carlsbad, California office.

30. Approximately simultaneous with plaintiff's commencement of employment, UBS also hired a financial advisor whose first name is Mike, but whose full name and location are currently unknown to plaintiff.

31. In or about the spring and early summer of 2006, Mike engaged a course of sexual harassment of plaintiff and other female employees in UBS's Carlsbad, California office. Mike engaged in said harassment with the actual and constructive knowledge and consent of Defendant UBS.

32. Mike's sexual harassment of the plaintiff consisted of sexual advances and demands, sexual assault, and sexually degrading remarks to plaintiff. Mike engaged in similar conduct with respect to other women in UBS's Carlsbad, California office.

33. Within approximately one month after being hired, plaintiff began complaining to Ferner about the above sexual harassment of plaintiff and other female employees in UBS's Carlsbad, California office. Ferner took no action with respect to Mike's sexual harassment and, when plaintiff complained that Mike sexually assaulted her, Ferber stated that plaintiff could "take it" or could "take care of [herself]" or words to that effect.

34. In retaliation for plaintiff's complaints about Mike's sexual harassment, Ferner on behalf of UBS took numerous actions against plaintiff which eventually resulted in an environment in the Carlsbad office that was so hostile to plaintiff that plaintiff was unable to continue working in that office. These included, but are not limited to the following: Ferner violated plaintiff's medical privacy, both within the office and outside. Disclosures concerning plaintiff's medical condition were made to plaintiff's Sales Assistant. In addition, UBS disclosed a series of adverse communications about plaintiff's personnel status to her Sales Assistant who then sent them to plaintiff. The said violations of privacy as to plaintiff's Sales Assistant not only made it impossible for plaintiff to work with the Sales Assistant, but also subjected plaintiff to humiliation and ridicule, and caused plaintiff to become a virtual pariah among the staff that plaintiff depended on. In addition, Ferner made defamatory statements about plaintiff to people in other securities firms, and to at least one of plaintiff's customers. On information and

belief, plaintiff further alleges that Ferner made defamatory innuendos about her to others. When plaintiff asked that Ferner honor the agreement that UBS would accommodate her need to work and place orders from her home Ferner refused. This refusal continued even after plaintiff's doctor sent UBS a letter in September 2006 stating that due to plaintiff's medical disability and the environment in the Carlsbad office, she needed to work from home. Another example of the retaliation was that Ferner began dealing directly with plaintiff's customers and attempted to persuade them to switch their accounts to Ferner or to other brokers in the office.

35. As a result of the foregoing and other wrongful conduct by Ferner and UBS, plaintiff entered treatment and continues to be treated for mental disability due to the foregoing events. On or about October 31, 2006, plaintiff wrote to Ferner (i) describing the foregoing and other intolerable working conditions and UBS's numerous breaches of agreements, (ii) informing him that these matters had caused plaintiff to suffer mental disability and (iii) that plaintiff's physician had advised that she was not to return to work under the existing working conditions. Despite the October 31, 2006 letter and Ferner's knowledge that the medical disability prevented plaintiff from reporting for work in his office, Ferner continued to retaliate against plaintiff by repeatedly insisting that she report to work by certain specific dates. This continued even after plaintiff's physician submitted a letter from my doctor advising that plaintiff was disabled and unable to report for work.

36. Ultimately, plaintiff was placed on leave status and continued in that status from January 2007 through mid-May 2007. UBS provided plaintiff no documentation as to the leave status or its length or expiration date. There was no communication between plaintiff and UBS during the period of January 2007 through mid-May 2007.

37. From January 2007 through May 2007 and thereafter continuing to this date, plaintiff has been under treatment for mental disability by her physician and mental health professionals, including psychiatrists. Plaintiff's mental disability increased in severity to the point that she was hospitalized from May 11 through May 17, 2007.

38. During that hospitalization, UBS on May 14, 2007, wrote to plaintiff stating that her medical leave had expired on May 1, 2007, that she was required to report for work in Ferner's office on that date, that she failed to report, and that, as a result, she was being discharged from UBS's employment, effective May 15, 2007.

39. By this reference, plaintiff incorporates the allegations contained in ¶ 8, subparagraph 8b, and ¶ 9 as if set forth fully herein. On May 25, 2007, UBS made written demand that plaintiff repay the unforgiven balance of that Note, despite a provision that the Note would be forgiven if UBS discharged plaintiff due to disability. In addition, due to the discharge, plaintiff forfeited the $132,239 in stock.

40. Plaintiff is informed and believes and based thereon alleges that at approximately the same time as the above-described termination of her employment, UBS publicly disclosed that her employment had been terminated. Said public disclosure was not in response to any special request for such information. In the circumstances, said public disclosure contained a false representation that plaintiff's employment was terminated for wrongdoing.

41. UBS, by its aforesaid conduct, has violated plaintiff's rights under the California Fair Employment and Housing Act, *Government Code* §§ 12900 et seq.

42. As a direct and proximate result of UBS's conduct, plaintiff has suffered damage in an amount to be proved at trial. Among other things, UBS's above conduct has caused Plaintiff to suffer emotional distress, humiliation, and mental anguish and has prevented and will in the future prevent plaintiff from obtaining employment in the securities industry for the remainder of her career.

43. As alleged in the original Complaint, ¶39, Plaintiff has filed more than one charge of discrimination with the California Department of Fair Employment and Housing. On December 11, 2006, based on advice and instructions from her then-attorney, Plaintiff tendered for filing by U. S. Mail a charge of discrimination based on the above actions that UBS engaged in during calendar year 2006. Plaintiff is informed and believes and based thereon alleges that said charge was properly addressed, with

postage fully prepaid, and arrived at the San Diego office of the California Department of Fair Employment and Housing ["DFEH"], but was not docketed or processed through the oversight of the DFEH. By the time that a right to sue letter would have been received from the DFEH, had the charge been properly handled at the DFEH, Plaintiff was without legal representation and unable to comprehend the situation or the consequence of receiving no right to sue letter due to the disability caused and/or exacerbated by UBS. Plaintiff did not become aware of the non-docketing of said December 2006 charge until on or about February 25, 2008.

44. On or about March 5, 2008, Plaintiff filed her second charge of discrimination against UBS with the DFEH, this time through counsel, utilizing the DFEH Internet-based, automated charge filing system. The second charge is based on all wrongful conduct of UBS, including the continuing violations that began in 2006 and continued through portions of calendar year 2007; such has her termination and UBS's demand that she repay the above-described loan in May 2007. A true and correct copy of the right to sue letter obtained as to the second charge is attached hereto as Exhibit 1.

FOURTH CAUSE OF ACTION

(Invasion of Privacy)

(As Against All Defendants)

45. Plaintiff incorporates herein by this reference paragraphs 1 through 5, 7 and 24 through 38 and 40 above, and re-alleges them as if fully set forth herein.

46. Plaintiff had a reasonable expectation of privacy in the medical information she disclosed to Mr. Ferner and to UBS.

47. Plaintiff had an expectation of privacy in the personnel information generated and maintained by Mr. Ferner and UBS as to her employment at UBS.

48. UBS's disclosures of private information concerning plaintiff's medical disability and personnel matters violated plaintiff's privacy.

49. The disclosures by defendant were public disclosures.

50. The facts so disclosed were private facts that plaintiff desired to keep private.

51. The disclosure by defendant of the above facts would be highly offensive to a reasonable person in plaintiff's position.

52. UBS knew, or acted with reckless disregard of the fact, that a reasonable person in Struthers' position would consider said public disclosure highly offensive.

53. The said information did not have a substantial connection to a matter of legitimate public concern.

54. Plaintiff was harmed in that she was scorned and abandoned by her business associates, exposed to contempt and ridicule, and suffered loss of reputation and standing in the community.

55. In addition, plaintiff has suffered injury to her business and employment in an amount according to proof. Among other things, UBS's public disclosure of plaintiff's termination has prevented and will in the future prevent plaintiff from obtaining employment in the securities industry for the remainder of her career.

56. UBS's above conduct was a substantial factor in causing plaintiff's harm.

57. In making said disclosures, UBS was guilty of oppression and malice. UBS engaged in said conduct in conscious disregard of plaintiff's rights, and in violation of *Civil Code* §§1709 and 3343. Plaintiff therefore seeks an award of exemplary damages pursuant to *Civil Code* §3294.

FIFTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

(As Against All Defendants)

58. Plaintiff incorporates herein by this reference paragraphs 1 through 5, 7, 8a, 24 through 38, 40, 46, 47, and 49 through 56 above, and re-alleges them as if fully set forth herein.

59. The actions of UBS were outrageous.

60. UBS intended to cause plaintiff emotional distress or were performed with reckless disregard of the probability that plaintiff would severe emotional distress.

61. Plaintiff has suffered emotional damage. Among other things, plaintiff has

been unable to work and will be unable to work in her profession and occupation.

62. UBS's aforementioned outrageous conduct was a substantial factor in causing plaintiff emotional distress and resulting damages in an amount to be proved at trial.

63. In doing the acts herein alleged, UBS acted knowingly, intentionally, and maliciously in that UBS engaged in said conduct in conscious disregard of plaintiff's rights. Plaintiff therefore seeks an award of punitive and exemplary damages under *Civil Code* §3294.

SIXTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

(As Against All Defendants)

64. Plaintiff incorporates herein by this reference ¶ 1 through 5, 7, 24 through 40, 46, 47, and 49 through 56 above, and re-alleges them as if fully set forth herein.

65. By its aforesaid conduct, UBS breached the implied covenant of good faith and fair dealing of its contract with plaintiff.

66. As a proximate result of the aforementioned conduct, plaintiff has suffered damages in an amount be proved at trial.

SEVENTH CAUSE OF ACTION

(Partial Rescission)

(As Against All Defendants)

67. Plaintiff incorporates herein by this reference paragraphs 1 through 5 and 7 through 18 above, and re-alleges them as if fully set forth herein.

68. As alleged above, UBS concealed, suppressed, and failed to disclose the material terms of the Note until after she had resigned from her employment with Morgan Stanley. As a condition of employing her, UBS for the first time presented her with a Note that contained provisions that went far beyond what UBS had represented the Note was to contain. Said undisclosed terms included provisions for compulsory arbitration of employment disputes and for 'at will' employment status.

69. When UBS presented plaintiff with said Note, after she had resigned from her

employment with Morgan Stanley, plaintiff had no alternative other than to agree to and execute them.

70. Based on the foregoing, plaintiff's apparent consents to compulsory arbitration of all employment disputes, the 'at will' employment agreement, and all provisions contained in the UBS Note other than the terms of the Note and forgiveness thereof were not real, mutual, or free in that they were obtained through deceit and economic duress.

NOTICE OF RESCISSION AND DEMAND FOR RETURN OF CONSIDERATION:

71. With respect to each of the above grounds for partial rescission, plaintiff would not have consented to the above portions of the Note had it not been for the circumstances alleged above. Accordingly, plaintiff is entitled to rescind those portions of the written contract. Since neither party has given consideration for those portions of the Note, there is no consideration to be returned.

72. As a result of the foregoing, all portions of the Note other than the terms of the loan, payment, and forgiveness of the amount due should be rescinded.

DEMAND FOR DAMAGES:

35. Etess also intends service of this complaint to serve as a demand against Curran under *Civil Code* §1692 for consequential damages caused by UBS's conduct, in an amount to be proved at trial.

36. Based on the facts alleged in the above paragraphs, UBS's aforementioned conduct constituted willful and intentional misrepresentations, deceit, and concealment of material facts known to UBS. In addition, UBS's conduct constituted malice in that it was carried on by UBS with a willful and conscious disregard of plaintiff's rights. Accordingly, UBS's conduct justifies an award of exemplary and punitive damages under *Civil Code* §3294.

EIGHTH CAUSE OF ACTION

(Unlawfully Preventing Employment by Misrepresentation)

(As Against All Defendants)

73. Plaintiff incorporates herein by this reference paragraphs 1 through 5, 7, 24 through 38, and 40, and re-alleges them as if fully set forth herein.

74. As a proximate result of the public disclosure of UBS's termination of plaintiff's employment, without any special request for such disclosure, plaintiff has been prevented from obtaining employment as a broker or the equivalent in the securities industry for the remainder of her working life, to plaintiff's damage in an amount to be proven at trial.

75. Said public disclosure violated *Labor Code* §§ 1050 and 1053. Accordingly, plaintiff is entitled to treble damages as provided in *Labor Code* § 1054.

76. Said public disclosure constituted willful and intentional misrepresentation, deceit, and concealment of material facts known to UBS within the meaning of *Civil Code* §1572. In addition, UBS engaged in said conduct maliciously in that it did so with a willful and conscious disregard of Plaintiff's rights. Accordingly, UBS conduct justifies an award of exemplary and punitive damages under *Civil Code* §3294.

ALLEGATIONS CONCERNING THE COURT'S JURISDICTION TO DETERMINE THE ARBITRABILITY OF THIS ACTION

77. UBS's misrepresentation and deceit, as alleged in ¶¶ 7-18 above, not only go to the inducement of the contract, but also specifically caused plaintiff to execute of the arbitration agreement.

78. Plaintiff's duress, as alleged in ¶¶ 68-72 above, specifically caused plaintiff to execute the arbitration agreement.

79. Under both the *Federal Arbitration Act* and California Supreme Court law, where a party's fraud or duress goes to the making of the arbitration agreement, this court has jurisdiction under *Code of Civil Procedure* §1281.2(b) to determine that said fraud and/or duress are "grounds for revocation" of the arbitration agreement.

80. Under *Code of Civil Procedure* §1281.2(c), this court has jurisdiction to determine that the entire controversy shall be tried before this Court.

WHEREFORE, Plaintiff for judgment as follows:

1. For compensatory damages in an amount to be proven at trial as to all causes of action;

2. With respect to the First, Third, Fourth, Fifth and Eighth Causes of Action, for punitive and exemplary damages according to proof;

3. With respect to the Eighth Cause of Action, for treble damages;

4. With respect to all causes of action:

a. For pre-judgment interest as allowed by law;

b. For attorney fees and costs as authorized by law;

c. For costs of suit herein incurred; and

d. For such other and f

DATED: June 27, 2008

David E. Rosenbaum

DAVID E. ROSENBAUM
Attorney for Plaintiff GAIL STRUTHERS

EXHIBIT 1

EXHIBIT 1

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
1350 FRONT STREET, SUITE 3005, SAN DIEGO, CA, 92101
(619) 645-2681
www.dfeh.ca.gov

March 05, 2008

STRUTHERS, GAIL
3546 MT. EVEREST BLVD.
SAN DIEGO, CA 92111

RE: E200708D5077-00
STRUTHERS/UBS FINANCIAL SERVICES, INC.

Dear STRUTHERS, GAIL:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective March 05, 2008 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

Belinda LeDoux
District Administrator

cc: Case File

JENNIFER NIES
ASSOCIATE DIRECTOR, CLIENT RELATIONSHIP MANAGER
UBS FINANCIAL SERVICES INC.
1000 HARBOR BLVD., 10TH FLOOR
WEEHAWKEN NJ 07086

DFEH-200-43 (06/08)

PLEASE FOLD THIS SHIPPING DOCUMENT IN HALF AND PLACE IT IN A WAYBILL POUCH AFFIXED TO YOUR SHIPMENT SO THAT THE BAR-CODE PORTION OF THE LABEL CAN BE READ AND SCANNED. ***WARNING: USE ONLY THE PRINTED ORIGINAL LABEL FOR SHIPPING. USING A PHOTOCOPY OF THIS LABEL FOR SHIPPING PURPOSES IS FRAUDULENT AND COULD RESULT IN ADDITIONAL BILLING CHARGES, ALONG WITHTHE CANCELLATION OF YOUR FEDEX ACCOUNT NUMBER

From: Origin ID: ARCA (888) 690 2882
Mary Drummond
Corporation Service Company
2711 Centerville Road
Suite 400
Wilmington, DE 19808

FedEx Express

E

Ship Date: 01JUL08
Actual Wgt: 1 LB
System#: 108202/FXRS0766
Account#: S 322544685

REF:

Delivery Address Bar Code

SHIP TO (201) 352 9724 **BILL THIRD PARTY**

UBS Financial Services Inc.
Mercinth Pearce
1200 Harbor Boulevard
Floor 10TH
Weehawken, NJ 07086

STANDARD OVERNIGHT **WED**

Deliver By:
02JUL08

TRK# **9447 6374 9317** FORM 0201

EWR A2

07086 -NJ-US

XA JSLA

LMS Packing Slip

Package ID: 1007093

Tracking Number:	944763749317
Package Recipient:	Mercinth Pearce
Recepient Company:	UBS Financial Services Inc.
Recepient Address:	1200 Harbor Boulevard Floor 10TH Weehawken NJ 07086 USA
Phone Number:	2013529724

Package Contents:

Transmittal Number	Case Number	Title of Action
5877778	37-2008-00079382-CU-BT-CTL	Gail Struthers vs. USB Financial Services, Inc.

BLUEBIRDonline.com (888) 477-0700

Exhibit 2

EXHIBIT "2"

COPY

James A. Goodman, State Bar No. 89715
Kathryn T. McGuigan, State Bar No. 232112
EPSTEIN BECKER & GREEN, P.C.
1925 Century Park East, Suite 500
Los Angeles, California 90067-2506
Telephone: 310.556.8861
Facsimile: 310.553.2165
Email: jgoodman@ebglaw.com
kmcguigan@ebglaw.com

2008 JUL 28 PM 4:09

Attorneys for Defendant
UBS Financial Services Inc. (improperly pled as "UBS Financial Services, Inc.")

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL [HALL OF JUSTICE] DIVISION

BY FAX

GAIL STRUTHERS, an individual, Plaintiff, v. UBS FINANCIAL SERVICES, INC., a corporation; and DOES 1 through 10, inclusive, Defendants.	CASE NO. 37-2008-00079382-CU-BT-CTL [Complaint Filed: March 6, 2008] [Amended Complaint Filed: June 30, 2008] **DEFENDANT UBS FINANCIAL SERVICES INC.'S ANSWER TO FIRST AMENDED COMPLAINT**

Defendant UBS Financial Services Inc. (improperly pled as "UBS Financial Services, Inc.) hereby answers the First Amended Complaint on behalf of itself and no other party.

GENERAL DENIAL

Defendant denies, generally and specifically, each and every allegation contained in each and every cause of action alleged against it in the First Amended Complaint pursuant to California Code of Civil Procedure 431.30(d). Defendant further denies that Plaintiff has sustained damages in the sum or sums alleged, or in any sum, or at all, by reason of any act or omission, or purported act or omission of Defendant.[1]

[1] Plaintiff simultaneously served the First Amended Complaint with the initial Complaint. As the First Amended Complaint supersedes Plaintiff's initial Complaint, UBSFS submits this general denial and its affirmative defenses in response to the First Amended Complaint. To the extent required, UBSFS similarly denies, generally and specifically, each and every allegation contained in each and every cause of action alleged against it in the initial Complaint pursuant to California Code of Civil Procedure 431.30(d).

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

1. Neither the First Amended Complaint nor any cause of action contained therein states sufficient facts to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(UNCLEAN HANDS)

2. Plaintiff may not seek relief from this Court because she has unclean hands.

THIRD AFFIRMATIVE DEFENSE

(WAIVER)

3. Plaintiff may not seek relief from this Court because her claims are subject to the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

(LACHES)

4. Plaintiff's claims are barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

(ESTOPPEL)

5. Plaintiff may not seek relief from this Court because her claims, or any of them, are subject to the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE)

6. Plaintiff has failed to mitigate her damages, and to the extent of such failure to mitigate, any damages awarded to Plaintiff should be reduced accordingly.

SEVENTH AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

7. Plaintiff's claims are barred by the applicable statue of limitations, including without limitation, Code of Civil Procedure § 340.

///

EIGHTH AFFIRMATIVE DEFENSE

(FAILURE TO PERFORM)

8. Assuming an oral agreement of employment existed between Plaintiff and Defendant, which Defendant denies, any failure by Defendant to perform any obligations resulted from Plaintiff's failure to perform her own obligations as required by the terms of that alleged agreement, and the performance on Plaintiff's part of her own obligations was a condition precedent to or concurrent with the performance of Defendant's obligations.

NINTH AFFIRMATIVE DEFENSE

(BREACH)

9. Any acts not performed by Defendant are excused by material breaches by Plaintiff.

TENTH AFFIRMATIVE DEFENSE

(CONDITIONS PRECEDENT, CONCURRENT OR SUBSEQUENT)

10. Plaintiff has failed to perform conditions precedent, concurrent, or subsequent to any contract on which her claims are based.

ELEVENTH AFFIRMATIVE DEFENSE

(PERFORMANCE)

11. Plaintiff's claims are barred because Defendant has performed or substantially performed under any alleged contract upon which Plaintiff purports to sue.

TWELFTH AFFIRMATIVE DEFENSE

(CONTRIBUTORY NEGLIGENCE)

12. Plaintiff's claims are barred because any damages she sustained are the result of her own negligence.

THIRTEENTH AFFIRMATIVE DEFENSE

(INDEPENDENT INTERVENING ACT)

13. Plaintiff's claims are barred because any damage she sustained was caused by an independent intervening act.

///

FOURTEENTH AFFIRMATIVE DEFENSE

(MANDATORY ARBITRATION)

14. Plaintiff and Defendant are parties to an agreement that chooses arbitration as a forum for resolving her claims. Plaintiff is therefore barred from her relief by her failure to pursue or exhaust her claims through mandatory arbitration.

FIFTEENTH AFFIRMATIVE DEFENSE

(INSUFFICIENCY OF PROCESS AND SERVICE OF PROCESS)

15. The First Amended Complaint is barred by the insufficiency of process and insufficiency of service of process.

SIXTEENTH AFFIRMATIVE DEFENSE

(NO ATTORNEY'S FEES, PUNITIVE DAMAGES OR EXEMPLARY DAMAGES)

16. Plaintiff cannot recover attorney's fees or punitive damages or exemplary damages under applicable law.

SEVENTEENTH AFFIRMATIVE DEFENSE

(CALIFORNIA CIVIL CODE SECTION 1692)

17. Plaintiff's claims are barred, in whole or in part, by California Civil Code section 1692.

EIGHTEENTH AFFIRMATIVE DEFENSE

(STATUTE OF FRAUDS)

18. Recovery based on any alleged employment agreement, to the extent it relies on any oral statement(s), is barred by the statute of frauds.

NINETEENTH AFFIRMATIVE DEFENSE

(FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES)

19. Plaintiff's claims are barred because the applicable administrative procedures and conditions precedent were not properly effectuated or complied with prior to the commencement of this action, including, without limitation, those requirements set forth by Government Code section 12960(d),

TWENTIETH AFFIRMATIVE DEFENSE

(ADDITIONAL DEFENSES)

20. Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates that additional affirmative defenses are available.

WHEREFORE, Defendant prays for judgment as follows:

1. That the Court enter an Order compelling Plaintiff to arbitrate her claims before the Financial Industry Regulatory Authority.
2. That the First Amended Complaint, and each purported count, be dismissed with prejudice.
3. That judgment be entered in favor of Defendant and against Plaintiff.
4. That Defendant be awarded reasonable attorneys' fees together with the costs of this action.
5. That Defendant be awarded such other relief as the Court may deem just and proper.

DATED: July 28, 2008

UBS FINANCIAL SERVICE INC.

By: ______________________________
James A. Goodman
Kathryn T. McGuigan

Attorney for Defendant
UBS Financial Services Inc. (improperly pled as "UBS Financial Services, Inc.")

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

1. At the time of service I was at least 18 years of age and **not a party to this legal action**.

2. My business address is 1925 Century Park East, Suite 500, Los Angeles, California 90067-2506.

3. I served copies of the following documents (specify the exact title of each document served):

   DEFENDANT UBS FINANCIAL SERVICES INC.'S ANSWER TO FIRST AMENDED COMPLAINT

4. I served the documents listed above in item 3 on the following persons at the addresses listed:

   David E. Rosenbaum
   484 So. Euclid Avenue, Suite 105
   Pasadena, CA 91101
   Telephone: 626.432.7422
   Facsimile: 626.792.5433

5. a. ☐ **By personal service.** I personally delivered the documents on the date shown below to the persons at the addresses listed above in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party delivery was made to the party or by leaving the documents at the party's residence between the hours of eight in the morning and six in the evening with some person not less than 18 years of age.

   b. ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 4 and *(specify one):*

   (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid on the date shown below, or

   (2) ☒ placed the envelope for collection and mailing on the date shown below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

   I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

   c. ☐ **By overnight delivery.** I enclosed the documents on the date shown below in an envelope or package provided by an overnight delivery carrier and addressed to the person at the addresses in item 4. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. ☐ **By messenger service.** I served the documents on the date shown below by placing them in an envelope or package addressed to the person on the addresses listed in item 4 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this proof of service or be contained in the Declaration of Messenger below.)

e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents on the date shown below to the fax numbers of the persons listed in item 4. No error was reported by the fax machine that I used. A copy of the fax transmission, which I printed out, is attached.

f. ☐ **By e-mail or electronic transmission.** Based on an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent on the date shown below to the e-mail addresses of the persons listed in item 4. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.

6. I served the documents by the means described in item 5 on *(date):* July 28, 2008

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/28/08	Lynn Ellis	*[signature]*
DATE	(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)

DECLARATION OF MESSENGER

☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 4. I delivered the documents on the date shown below to the persons at the addresses listed in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence between the hours of eight in the morning and six in the evening with some person not less than 18 years of age.

At the time of service, I was at least 18 years of age. I am not a party to the above referenced legal proceeding.

I served the envelope or package, as stated above, on *(date):* ____________________

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE	(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

2. My business address is 1925 Century Park East, Suite 500, Los Angeles, California 90067-2506.

3. I served copies of the following documents (specify the exact title of each document served):

NOTICE OF REMOVAL OF CIVIL ACTION PURSUANT TO 28 U.S.C. § 1441 [Diversity Jurisdiction]

4. I served the documents listed above in item 3 on the following persons at the addresses listed:

Attorneys for Plaintiff:

David E. Rosenbaum
484 So. Euclid Avenue
Suite 105
Pasadena, CA 91101

Telephone: 626.432.7422
Facsimile: 626.792.5433

5. a. ☐ **By personal service.** I personally delivered the documents on the date shown below to the persons at the addresses listed above in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party delivery was made to the party or by leaving the documents at the party's residence between the hours of eight in the morning and six in the evening with some person not less than 18 years of age.

b. ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 4 and *(specify one):*

(1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid on the date shown below, or

(2) ☒ placed the envelope for collection and mailing on the date shown below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

c. ☐ **By overnight delivery.** I enclosed the documents on the date shown below in an envelope or package provided by an overnight delivery carrier and addressed to the person at the addresses in item 4. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. ☐ **By messenger service.** I served the documents on the date shown below by placing them in an envelope or package addressed to the person on the addresses listed in item 4 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this proof of service or be contained in the Declaration of Messenger below.)

e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents on the date shown below to the fax numbers of the persons listed in item 4. No error was reported by the fax machine that I used. A copy of the fax transmission, which I printed out, is attached.

f. ☐ **By e-mail or electronic transmission.** Based on an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent on the date shown below to the e-mail addresses of the persons listed in item 4. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.

6. I served the documents by the means described in item 5 on *(date):* July 29, 2008

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

7/29/08	Lynne Conner	
DATE	(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

ORIGINAL

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED 2008 JUL 30 PM 2:54 CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA DEPUTY

'08 CV 1381 H JMA

I. (a) PLAINTIFFS
GAIL STRUTHERS

DEFENDANTS
UBS FINANCIAL SERVICES INC.

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Hudson
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
David E. Rosenbaum
484 So. Euclid Avenue
Suite 105
Pasadena, CA 91101
626.432.7422

Attorneys (If Known)
James A. Goodman & Kathryn T. McGuigan
Epstein Becker & Green, P.C.
1925 Century Park East, Suite 500
Los Angeles, CA 90067
310.556.8861

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- [ ] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question (U.S. Government Not a Party)
- [ ] 2 U.S. Government Defendant
- [X] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	[X] 1	[ ] 1	Incorporated *or* Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated *and* Principal Place of Business In Another State	[ ] 5	[X] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability
- [ ] 196 Franchise

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury

PERSONAL INJURY
- [ ] 362 Personal Injury - Med. Malpractice
- [ ] 365 Personal Injury - Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 441 Voting
- [X] 442 Employment
- [ ] 443 Housing/ Accommodations
- [ ] 444 Welfare
- [ ] 445 Amer. w/Disabilities - Employment
- [ ] 446 Amer. w/Disabilities - Other
- [ ] 440 Other Civil Rights

PRISONER PETITIONS
- [ ] 510 Motion to Vacate Sentence

Habeas Corpus:
- [ ] 530 General
- [ ] 535 Death Penalty
- [ ] 540 Mandamus & other
- [ ] 550 Civil Rights
- [ ] 555 Prison Condition

FORFEITURE/PENALTY
- [ ] 610 Agriculture
- [ ] 620 Other Food & Drug
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 630 Liquor Laws
- [ ] 640 R.R. & Truck
- [ ] 650 Airline Regs.
- [ ] 660 Occupational Safety/Health
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Mgmt. Relations
- [ ] 730 Labor/Mgmt. Reporting & Disclosure Act
- [ ] 740 Railway Labor Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- [ ] 462 Naturalization Application
- [ ] 463 Habeas Corpus - Alien Detainee
- [ ] 465 Other Immigration Actions

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [ ] 840 Trademark

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- [ ] 400 State Reapportionment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 480 Consumer Credit
- [ ] 490 Cable/Sat TV
- [ ] 810 Selective Service
- [ ] 850 Securities/Commodities/ Exchange
- [ ] 875 Customer Challenge 12 USC 3410
- [ ] 890 Other Statutory Actions
- [ ] 891 Agricultural Acts
- [ ] 892 Economic Stabilization Act
- [ ] 893 Environmental Matters
- [ ] 894 Energy Allocation Act
- [ ] 895 Freedom of Information Act
- [ ] 900 Appeal of Fee Determination Under Equal Access to Justice
- [ ] 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- [ ] 1 Original Proceeding
- [X] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from another district (specify)
- [ ] 6 Multidistrict Litigation
- [ ] 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
28 U.S.C. Sections 1332 and 1441(b)

Brief description of cause:
Disability discrimination, misrepresentation.

VII. REQUESTED IN COMPLAINT: [ ] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $**

CHECK YES only if demanded in complaint: **JURY DEMAND:** [ ] Yes [X] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE ______ DOCKET NUMBER ______

DATE July 29 2008 SIGNATURE OF ATTORNEY OF RECORD [signature]

FOR OFFICE USE ONLY

RECEIPT # 153497 AMOUNT $350 APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

TAC 7/30/08

CSDJS44

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 153497 - TC

July 30, 2008
14:56:33

Civ Fil Non-Pris
USAO #.: 08CV1381
Judge..: NAPOLEON A JONES, JR
Amount.: $350.00 CK
Check#.: B3028917/B11952

Total-> $350.00

FROM: GAIL STRUTHERS
VS
UBS FINANCIAL SERVICES